



# County of Fairfax, Virginia

## AMENDMENT

Date: **AUG 31 2017**

### AMENDMENT NO. 8

CONTRACT TITLE: Fingerprint Identification System

CONTRACTOR

Morpho Trak, LLC  
5515 E. La Palma Ave, Suite 100  
Anaheim, CA 92807

SUPPLIER CODE

1000011602

CONTRACT NO.

4400006490

By mutual agreement, contract 4400006490 is hereby amended as follows:

- **ADD:** The attached Contractor's May 3, 2017 Proposal #00-000976-C entitled Northern Virginia Regional Identification System - LiveScan Service Model Plan.

All other prices, terms and conditions remain the same.

ACCEPTANCE:

BY: \_\_\_\_\_

(Signature)

Sr Director

(Title)


Andree Gilmore

(Printed)

Aug 24, 2017

(Date)

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Contracts Manager

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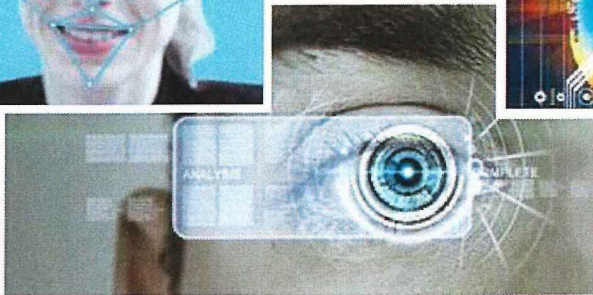
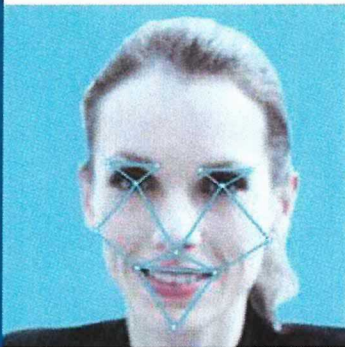
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MORPHOTRAK

## Northern Virginia Regional Identification System

### LiveScan Service Plan



INNOVATION • INTEGRITY • QUALITY • EXPERIENCE

Amendment No. 8  
00-000976-C  
May 3, 2017

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### IMPORTANT NOTE REGARDING CONFIDENTIALITY

Certain information in this Proposal is confidential and/or proprietary (i.e., trade secret) to MorphoTrak, LLC. Such information is identified in this Proposal by MorphoTrak as "MorphoTrak Confidential" or "MorphoTrak Proprietary". Disclosure of such information to the public or to third parties is strictly prohibited. In addition, reproduction of this Proposal is strictly prohibited. If additional copies are needed by NOVARIS, MorphoTrak will make and deliver the required number of copies to NOVARIS. If NOVARIS does not order the products and services described in this Proposal, then NOVARIS shall destroy all copies of this Proposal in its possession with the exception of the one (1) original Proposal that NOVARIS may retain as an archival record if required by law or regulation.



## 1 Solution Overview

The Northern Virginia Regional Identification System (NOVARIS) has requested a proposal to replace its aging LiveScans with updated MorphoTrak LiveScan technology coupled with the flexibility of a service plan. Our team has documented NOVARIS' unique requirements to ensure this proposed solution accommodates your specific workflows and provides the functionality you need to process applicants and criminals. By using secure encryption to protect your sensitive data, the LiveScans will transmit biometric information to your locations in Arlington and Alexandria, as well as the National Capital Region Network (NCRN).

We have proposed five-year Service Model pricing for three LiveScan configurations: Ruggedized, Desktop with a camera, and Desktop without a camera. Under the Service Model plan, NOVARIS will pay a set fee per year for a total of five years for the 42 units included in this quote. MorphoTrak will retain ownership of the software and equipment and will provide the following services:

- ◆ Configuration according to agreed-upon design documentation
- ◆ Installation
- ◆ Integration with the specified interfaced systems
- ◆ Site testing
- ◆ On-site training (one session per system, to be performed at the time of installation)
- ◆ Maintenance service for the life of the contract (see section 7)

At the end of the five year agreement, NOVARIS may either:

- ◆ Let the agreement lapse, in which case MorphoTrak will remove the equipment.
- ◆ Renew the agreement for an additional five years with similar conditions, in which case MorphoTrak will provide new equipment with the same functionality.

### *Delivering the Ultimate User Experience*

MorphoTrak understands that a livescan, like any technology, is a tool that must be easy to use at all levels to be truly effective. The intuitiveness, simplicity, and configurability of its workflows, graphical user interfaces (GUIs), processes, and parameters will determine the degree of user acceptance, and have a direct impact on the extent to which your investment improves productivity.

Building upon the widely successful GUIs, workflows, configurability, and automation capabilities of earlier livescan solutions, our proposed solution is the most forward-thinking, feature-rich, and user-friendly offering in the marketplace, ensuring at all levels the ultimate user experience and, thereby, optimizing your return on investment.

## 2 LiveScans Product Descriptions

### 2.1 Ruggedized LiveScan

MorphoTrak's Ruggedized LiveScan is a comprehensive fingerprinting solution that quickly and easily captures and transmits high-quality images to meet your growing security needs. The LiveScan includes an easy-to-use, full-featured scanner that is efficiently housed in a 28-inch-wide ruggedized ergonomic cabinet. The workstation supports electronic AFIS submissions as well as submissions to card printers. The design draws upon MorphoTrak's extensive experience in supplying thousands of LiveScan units that are fully integrated with the AFISs of local, state, regional, and federal law enforcement agencies, as well as with local RMS / JMS solutions.

The Microsoft Windows-based Ruggedized LiveScan offers superior scanning capabilities. It includes an FBI-certified scanner that can capture and deliver unsurpassed image quality. The base scanner provides true 500 ppi, 256 gray-level input, and captures both 800x750 pixel rolled prints and 1600x1000 pixel slap prints, as well as upper, lower, and writer's palm prints. It is fully compliant with FBI NGI EBTS and ANSI / NIST image standards, which ensures consistent image quality of all prints.

After the Ruggedized LiveScan captures prints, automatic processing is performed. This includes minutiae extraction, and image-quality measurements that are obtained by using our proprietary image-processing algorithm. Real-time quality assurance automatically detects if fingerprints are rolled correctly, and ensures that each fingerprint image is in the correct location. This saves time and reduces the percentage of rejected submissions that are due to poor image quality. At stations equipped for palm print capture, automatic processing includes minutiae extraction and an assessment of image quality. Real-time quality assurance compares the left and right palm print images with the fingers from each hand to ensure that the palms and fingers are correctly paired. By using the Ruggedized LiveScan, you can evaluate the image data quality and integrity before acceptance, and rescan low-quality prints. A keyboard and mouse are standard equipment, and the monitor is available in a variety of sizes, with or without touchscreen capabilities. A multidirectional camera provides full-featured photo capture capability; the captured photos may be printed on an available printer.





With the Ruggedized LiveScan, users can track the status of each submission, obtain responses quickly, and resubmit cases when necessary. The station also offers a continued low cost of operation and ownership, with very little maintenance required. The station's precision scanning platen is waterproof, to protect it from various fluids and for ease of cleaning. The platen is located at the most ergonomically advantageous height of 39 inches. This height is based upon ergonomic standards for the 50th percentile of the population, making fingerprint processing easy for the largest pool of individuals.

The central processing unit (CPU) is housed behind a lockable door in a compartment with vents and a fan, where the Uninterruptible Power Supply (UPS) is located. In our proposed solution for NOVARIS, a UPS is included with each LiveScan. We will integrate your existing Honeywell barcode scanners with the LiveScans. Other cabinet features include wheels for easy relocation, a pair of foot pedals that support hands-free workflow advancement, and a sliding drawer that houses the keyboard. Furthermore our software includes a user-friendly GUI as shown in

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Figure 1. We solicit feedback from our Users Group community to drive continual improvement and to achieve the highest customer satisfaction.



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**Figure 1: LiveScan User Friendly GUI**

*The LiveScan GUI makes it easy for operators to capture good prints.*

### **2.2 Desktop LiveScan**

MorphoTrak's comprehensive fingerprinting solution portfolio includes the Desktop LiveScan. The station combines an easy-to-use, full-featured fingerprint scanner with the convenience of a desktop PC. It is designed for both electronic submission to an AFIS and for hardcopy card output via a FBI-certified card printer.

The Windows-based Desktop LiveScan offers the same superior scanning capabilities as the Ruggedized LiveScan, and it can run the same workflows. A keyboard and mouse are standard equipment, and the monitor is available in a variety of sizes, either with or without touchscreen capabilities. An optional foot-pedal is available to support hands-free workflow advancement. The optional camera provides full-featured photo capture capability; photos may subsequently be printed on an available printer.

The scanner provides true 500 ppi, 256 gray-level input, and captures both 800x750 pixel rolled prints and 1600x1000 pixel slap prints, as well as upper, lower, and writer's palm prints.



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Like the ruggedized version, with the Desktop LiveScan, users can track the status of each submission, obtain responses quickly, and resubmit cases when necessary. It also offers a continued low cost of operation and ownership, with very little maintenance required.

## 2.3 Training Sessions

LiveScan pricing includes installation, integration, and testing, which takes approximately a half day to complete, followed by a half day of training. Training is primarily hands-on and can accommodate up to five students for optimal training and user learning.

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### 3 Support and Maintenance

MorphoTrak's biometrics worldwide Customer Support Division specializes in high-end, value-added service solutions for mission-critical environments. This is a true 24 hours a day, 7 days a week support operation, with total call management from beginning to end.

Help Desk capabilities include "live answer" of calls within an average of 15 seconds by a customer support representative. Ticket logging, dispatching, and tracking and escalation of all service requests are performed at the Help Desk. Service offerings include remote support via telephone and dial-in, as well as on-site support through field service personnel.

MorphoTrak currently has approximately 75 field personnel, including dedicated Customer Support Engineers (CSEs), who support customers in the U.S. A local MorphoTrak CSE will continue to support MorphoBIS workstations. Technical escalations are handled by a team of 12 senior technical engineers located in Anaheim, CA. This team provides technical assistance to the field staff as needed to quickly resolve all system-related issues. The goal of this team is to meet or exceed the requirements of the Service Level Agreement (SLA) defined in the Maintenance Support Agreement.

#### *Annual Customer Satisfaction Survey*

MorphoTrak conducts an Annual Worldwide Customer Satisfaction Survey by using a six-point evaluation scale in which respondents can select one of the following ratings: "Very Satisfied," "Satisfied," "Neither Satisfied Nor Dissatisfied," "Dissatisfied," "Very Dissatisfied," and "Not Applicable."

In our 2016 Biometrics Customer Satisfaction Survey, more than 94 percent of the respondents said they were either Satisfied or Very Satisfied with the service support that MorphoTrak provided during the year. We continually strive to maintain your trust and improve our service.

#### *Support Approach*

Our proven support strategy combines secure remote support capabilities with on-site assistance. The NOVARIS has already been assigned a dedicated team of system experts. Each member of the service team is a qualified diagnostic technician, highly experienced in MorphoTrak systems. In fact, support starts before the system is even shipped to your site. To ensure the support team has an in-depth knowledge of each customer site, members are involved when your system is being configured in the factory.

MorphoTrak's Customer Support Center (CSC) is the central point of contact for all technical customer service requests. The goal of the CSC is to keep customers' systems up and



running, with a timely response to requests for support. The Support Center call management process ensures that all customer requests are logged, tracked, monitored, and reported to the agency as requested from initial call through problem resolution.

The NOVARIS requests for support are logged and tracked by MorphoTrak's 24x7 CSC. The CSC representatives enter telephone messages, requests for service, and requests for technical assistance into an on-line tracking system. NOVARIS service requests can be logged via the following options:

- ◆ Telephone at (800) 734-6241 (Live Answer)
- ◆ E-mail to [CSCenter@morphotrak.com](mailto:CSCenter@morphotrak.com)
- ◆ E-mail to [Applix.VIP@morphotrak.com](mailto:Applix.VIP@morphotrak.com)

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### **Figure 2: MorphoTrak's Customer Support Center**

*MorphoTrak's Biometrics Solutions Business Unit Customer Support Center is staffed 24 hours a day, 7 days a week.*

### **Support Features**

MorphoTrak offers a range of support services, including corrective and preventive maintenance, on-site parts replacement, remote telephone support, and MorphoTrak software updates, referred to as "Releases." Technical support services include on-site corrective and preventive maintenance, on-site parts replacement, and remote telephone support.

- ◆ Standard support features include the following:
- ◆ Hardware and software system support coverage
- ◆ Replacement hardware parts
- ◆ 9x5 coverage with availability of 24x7 coverage
- ◆ Remote telephone support
- ◆ Guaranteed response time

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## 4 LiveScan Service Plan Pricing

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Total	\$1,441,534
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## 4.1 Assumptions and Conditions

In developing this proposal, MorphoTrak has made the following assumptions, which apply to all options:

- ◆ NOVARIS will provide facility resources necessary for equipment installation and operation, including access, space, environmental control, and electrical power in accordance with MorphoTrak specifications.
- ◆ NOVARIS will provide the necessary local area network (LAN) and wide area network (WAN) service and backend connectivity.
- ◆ NOVARIS will provide electrical connections for all LiveScans.
- ◆ NOVARIS will provide network connectivity for printers.
- ◆ NOVARIS will provide network connectivity to the BIS AFIS and State AFIS.
- ◆ The charge code table will be maintained by the NOVARIS data warehouse in a CSV format that is in a location accessible by the LiveScans.
- ◆ MorphoTrak will have access to all locations where the LiveScans will be installed.
- ◆ Secure File Transfer Protocol (SFTP) will be the methodology for encryption.

## 5 Additional Terms

Additional engineering effort by MorphoTrak beyond the scope of the standard product will be quoted at a firm-fixed price based on our current service rates in effect at the time of the change, plus any related travel or administrative expenses. Assistance with training and questions for the agency's database or any programming, scripting, or review of programs beyond work quoted above are excluded from this offer. MorphoTrak assumes that organizations requesting these utilities have advanced programming expertise and will assume all responsibility for the deployment and support of the final application.

MorphoTrak shall own all right, title, and interest to any software developed under this contract. The Northern Virginia Regional Identification System (NOVARIS) (NOVARIS includes the following jurisdictions: Montgomery County, Prince George's County, Alexandria, Arlington, Falls Church, Fairfax City, Fairfax County, Prince William County, Loudoun County, Herndon, and Vienna) shall have an unrestricted license to use said software internally but not for any commercial purposes. The licensed software is a commercially valuable, proprietary product of MorphoTrak. MorphoTrak represents that the licensed software contains MorphoTrak proprietary and Confidential Information and as such is protected in accordance with Section 15 of this Agreement and Exhibit A. The Software License Agreement in Exhibit A to this Proposal governs NOVARIS' use of the software deliverables described in this Proposal.

MorphoTrak reserves the right to substitute hardware of equal value with equal or better capability, based upon market availability. If, however, such equipment is unavailable, MorphoTrak will make its best effort to provide a suitable replacement.

Purchase orders should be sent to MorphoTrak by facsimile or postal service. Please direct all order correspondence, including Purchase Order, to:

**Paul Tselepis**  
MorphoTrak, LLC  
5515 East La Palma Avenue, Suite 100  
Anaheim, California 92807

Phone: (703) 509-4694  
Fax: (714) 238-2049  
E-mail: [paul.tselepis@morpho.com](mailto:paul.tselepis@morpho.com)

MorphoTrak appreciates the opportunity to present this proposal. Product purchase will be governed by Fairfax County Contract 4400006490 and the Service Agreement, a draft of which is attached for your convenience in Section 7. If applicable, firm delivery schedules will be provided and development will commence after the NOVARIS and MorphoTrak have signed the finalized design documentation. Prices are exclusive of any and all state or local taxes, or other fees or levies. The NOVARIS payments are due to MorphoTrak within twenty days after receipt of invoice. No subsequent Purchase Order can override such terms.

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Nothing additional shall be binding upon MorphoTrak or the County unless a subsequent agreement is signed by both parties.



## 6 Service Model Product Support

Table 3 provides a summary of maintenance services and support. Items designated as Optional are not included in any stated pricing.

**Table 3: Service Model Maintenance Support**

<b>Biometrics Support Features</b>	
<i>Software Support M-F 8am-5pm Customer Local Time</i>	<i>Included</i>
Unlimited Telephone Technical Support	√
Two Hour Telephone Response Time	√
Remote Dial-in Analysis	√
Software Standard Releases - Enhancements	√
Software Supplemental Releases	√
Automatic Call Escalation	√
Software Customer Alert Bulletins	√
<i>Hardware Support-Onsite M-F 8am-5pm Customer Local Time</i>	<i>Included</i>
On-Site Response	√
On-Site Corrective Maintenance	√
On-Site Parts Replacement	√
Preventive Maintenance	√
Escalation Support	√
Hardware Service Reporting	√
Hardware Customer Alert Bulletins	√
<i>Parts Support</i>	<i>Included</i>
Advanced Exchange Replacement Parts	√
Telephone Technical Support for Parts Replacement	√
Parts Customer Alert Bulletins	√
<i>Software Uplifts</i>	
Hours of Coverage Available up to 24 Hours Per Day, 7 Days / Week	Optional
One Hour Telephone Response	Optional
Software Standard Releases – New Features	Optional
<i>Hardware Uplifts</i>	
Hours of Coverage Available up to 24 Hours Per Day, 7 Days / Week	Optional

Up to 4 Hours On-site Response	Optional
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## 7 MorphoTrak Service Agreement

MorphoTrak, LLC ("MorphoTrak" or "Seller"), a Delaware limited liability corporation, having a principal place of business at 5515 E. La Palma Ave., Suite 100, Anaheim, CA 92807, and Fairfax County, (representing the Northern Virginia Regional Identification System ("Customer"), having a place of business at 4890 Alliance Drive, Suite #2700, Fairfax, VA 22030, enter into this Service Agreement ("Agreement"), pursuant to which Customer will purchase and Seller will sell the services as described below and in the attached exhibits. Seller and Customer may be referred to individually as "party" and collectively as "parties."

For good and valuable consideration, the parties agree as follows.

### SECTION 1. EXHIBITS

The Exhibits listed below are incorporated into and made a part of this Agreement. In interpreting this Agreement and resolving any ambiguities, the main body of this Agreement will take precedence over the Exhibits and any inconsistency between the Exhibits will be resolved in the order in which they are listed below. The Agreement is incorporated into the parties' Contract No. 4400006490 ("the Contract"). In interpreting the Contract and resolving any ambiguities, the Contract will take precedence over the Agreement.

Exhibit A "Software License Agreement"

Exhibit B "Payment Schedule"

Exhibit C "Statement of Work"

### SECTION 2. DEFINITIONS

"Acceptance Tests" means those tests described in the Acceptance Test Plan.

"Agreement Price" means the price for the Services, exclusive of any applicable sales or similar taxes and freight charges.

"Default" means failure by either party to perform a material obligation under this Agreement.

"Effective Date" means that date upon which the last party to sign this Agreement has executed it.

"Equipment" means the physical hardware supplied by Seller as outlined in the attached Description of Covered Products, and any related goods or material used by the Seller to provide the Services.

"Final System Acceptance" means the date on which the Customer fully accepts the System as a result of successful completion of the Acceptance Tests.

"Infringement Claim" means a third party claim alleging that the Equipment manufactured by MorphoTrak or the MorphoTrak Software infringes upon the third party's United States patent or copyright.

"Initial System Acceptance" means the date on which the Customer begins Operational Use of the System.

"MorphoTrak" means MorphoTrak, LLC.

"MorphoTrak Software" means Software that MorphoTrak or Seller owns. The term includes Product Releases, Standard Releases, and Supplemental Releases.

"Non-MorphoTrak Software" means Software that a party other than MorphoTrak or Seller owns.



"Operational Use" means when Customer first uses the System to perform functions as outlined in the attached Statement of Work.

"Optional Technical Support Services" means fee-based technical support services that are not covered as part of the standard Services.

"Patch" means a specific change to the Software that does not require a Release.

"Principal Period of Maintenance" or "PPM" means the specified days and times, as set forth in the Statement of Work, that Services will be provided under this Agreement.

"Products" means the Equipment (if applicable as indicated in the Description of Covered Products) and Software provided by Seller.

"Proprietary Rights" means the patents, patent applications, inventions, copyrights, trade secrets, trademarks, trade names, mask works, know-how, and other intellectual property rights in and to the Equipment and Software, including those created or produced by MorphoTrak or Seller under this Agreement and any corrections, bug fixes, enhancements, updates or modifications to or derivative works from the Software whether made by MorphoTrak or another party.

"Releases" means an Update or Upgrade to the MorphoTrak Software and are characterized as "Supplemental Releases," "Standard Releases," or "Product Releases." A "Supplemental Release" is defined as a minor release of MorphoTrak Software that contains primarily error corrections to an existing Standard Release and may contain limited improvements that do not affect the overall structure of the MorphoTrak Software. Depending on Customer's specific configuration, a Supplemental Release might not be applicable. Supplemental Releases are identified by the third digit of the three-digit release number, shown here as underlined: "1.2.3". A "Standard Release" is defined as a major release of MorphoTrak Software that contains product enhancements and improvements, such as new databases, modifications to databases, or new servers. A Standard Release may involve file and database conversions, System configuration changes, hardware changes, additional training, on-site installation, and System downtime. Standard Releases are identified by the second digit of the three-digit release number, shown here as underlined: "1.2.3". A "Product Release" is defined as a major release of MorphoTrak Software considered to be the next generation of an existing product or a new product offering. Product Releases are identified by the first digit of the three-digit release number, shown here as underlined: "1.2.3". If a question arises as to whether a Product offering is a Standard Release or a Product Release, MorphoTrak's opinion will prevail, provided that MorphoTrak treats the Product offering as a new Product or feature for its end user customers generally.

"Residual Error" means a software malfunction or a programming, coding, or syntax error that causes the Software to fail to conform to the Specifications.

"Services" means those services described in the Statement of Work and provided under this Agreement.

"Site" means the premises where Products are delivered and/or installed, or where the Services are performed, not including Seller's premises from which it performs remote Services.

"Software" means the MorphoTrak Software and Non-MorphoTrak Software that is furnished with the System or Equipment.

"Specifications" means the design, form, functionality, or performance requirements described in published descriptions of the Software, and if also applicable, in any modifications to the published specifications as expressly agreed to in writing by the parties.

"Start Date" means the date on which the term of this Agreement begins on Initial System Acceptance. This is the date when Services commence and Service Fees are due.



"System" means the Products and Services provided by Seller as a system as more fully described in the Statement of Work.

"Technical Support Services" means the remote telephonic support provided by Seller on a standard and centralized basis concerning the Products, including diagnostic services and troubleshooting to assist Customer in ascertaining the nature of a problem being experienced by the Customer, minor assistance concerning the use of the Software (including advising or assisting the Customer in attempting data/database recovery, database set up, client-server advice), and assistance or advice on installation of Releases provided under this Agreement.

"Update" means a Supplemental Release or a Standard Release.

"Upgrade" means a Product Release.

### **SECTION 3. SCOPE AND TERM OF SERVICES**

3.1. **SCOPE OF SERVICES.** In accordance with the provisions of this Agreement and in consideration of payment by Customer of the Service Fee, Seller will provide, ship, and install (if applicable) the Equipment described in the Description of Covered Products, and perform its other contractual responsibilities, all in accordance with this Agreement and the attached Statement of Work. As explained in further detail below, notwithstanding the placement of the Equipment in the Customer's facility, title to the Equipment shall remain in Seller's name, and Customer shall act as a responsible bailee for the Equipment. Customer will perform its contractual responsibilities in accordance with this Agreement and the attached Statement of Work.

3.2. **CHANGE ORDERS.** Seller will provide the products as outlined in the attached Description of Covered Products and perform the Services as outlined in the attached Statement of Work. Either party may request changes outside the scope of work detailed in this Agreement. If a requested change causes an increase or decrease in the annual Service Fee or time required to perform this Agreement, Seller and Customer will agree to an equitable adjustment of the Agreement Price, schedule, or both, and will reflect such adjustment in a change order. Neither party is obligated to perform requested changes unless both parties execute a written change order.

3.3. **TERM.** Unless otherwise terminated in accordance with the provisions of this Agreement or extended by mutual agreement of the parties, the term of this Agreement shall begin on the Effective Date and shall continue for a period of five (5) years from the date of Initial System Acceptance with one (1) optional four (4) year renewal period.

3.4. **MORPHOTRAK SOFTWARE.** Any MorphoTrak Software, including subsequent Releases, is licensed to Customer solely in accordance with the Software License Agreement, attached hereto as Exhibit A. Customer hereby accepts and agrees to abide by all of the terms and restrictions of the Software License Agreement.

3.5. **NON-MORPHOTRAK SOFTWARE.** Any Non-MorphoTrak Software is licensed to Customer in accordance with the standard license, terms, and restrictions of the copyright owner on the Effective Date unless the copyright owner has granted to MorphoTrak the right to sublicense the Non-MorphoTrak Software pursuant to the Software License Agreement, in which case it applies and the copyright owner will have all of Licensor's rights and protections under the Software License Agreement. MorphoTrak makes no representations or warranties of any kind regarding Non-MorphoTrak Software. Non-MorphoTrak Software may include Open Source Software. All Open Source Software is licensed to Customer in accordance with, and Customer agrees to abide by, the provisions of the standard license of the copyright owner and not the Software License Agreement. Upon request by Customer, MorphoTrak will use commercially reasonable efforts to (i) determine whether any Open Source Software will be provided under this Agreement; and if so, (ii) identify the Open Source Software and provide to Customer a copy of the applicable standard license (or specify where such license may be found); and (iii) provide to Customer a copy of the Open Source Software



source code if it is publicly available without charge (although a distribution fee or a charge for related services may be applicable).

3.6. SUBSTITUTIONS. At no additional cost to Customer, Seller reserves the right to substitute any Equipment, Software, or services to be provided by Seller, provided that the substitute meets or exceeds the specifications outlined in the Statement of Work and is of equivalent or better quality to the Customer. Any such substitution will be reflected in a written change order signed by both parties.

3.7. When Seller performs Services at the Customer Site, Customer agrees to provide to Seller, at no charge, a non-hazardous environment for work with shelter, heat, light, and power, and with full and free access to the covered Products. The Customer shall cooperate to provide all information pertaining to the hardware and software with which the Products are interfacing to enable Seller to perform its obligations under this Agreement.

3.8. Seller will provide to Customer Technical Support Services and Releases as follows:

3.8.1. Seller will provide Technical Support Services and correction of Residual Errors during the PPM in accordance with the Statement of Work. Any Technical Support Services that are performed by Seller outside the contracted PPM and any Residual Error corrections that are outside the scope shall be billed at the then current hourly rates, subject to prior written approval by Customer. Technical Support Services will be to investigate specifics about the functioning of covered Products to determine whether there is a defect in the Product and will not be used in lieu of training on the covered Products.

3.8.2. Seller will notify Customer of available Releases and provide Customer, without additional license fees, an available Supplemental or Standard Release after receipt of a request from Customer. Customer is responsible for paying for any installation or other services and any necessary Equipment or Non MorphoTrust Software provided by Seller in connection with such Supplemental or Standard Release. Any services will be performed in accordance with a mutually agreed upon schedule.

3.8.3. Seller will provide to Customer an available Product Release after receipt of a request from Customer, but Customer must pay for all additional license fees, any installation or other services, and any necessary Equipment provided by Seller in connection with such Product Release. Any services will be performed in accordance with a mutually agreed schedule.

3.8.4. Seller does not warrant that a Release will meet Customer's particular requirement, operate in the combinations that Customer will select for use, be uninterrupted or error-free, be backward compatible, or that all errors will be corrected. Full compatibility of a Release with the capabilities and functions of earlier versions of the Software may not be technically feasible. If it is technically feasible, services to integrate these capabilities and functions to the updated or upgraded version of the Software may be purchased at Customer's request on a time and materials basis at Seller's then current rates for professional services.

3.8.5. Seller's responsibilities under this Agreement to provide Technical Support Services shall be limited to the current Standard Release plus the two (2) prior Standard Releases (collectively referred to in this section as "Covered Standard Releases."). Notwithstanding the preceding sentence, Seller will provide Technical Support Services for a Severity Level 1 or 2 (defined in the Statement of Work) error concerning a Standard Release that precedes the Covered Standard Releases unless such error has been corrected by a Covered Standard Release (in which case Customer shall install the Standard Release that fixes the reported error or terminate this Agreement as to the applicable Software).

3.9. The Services described in this Agreement are the only covered services under this Agreement. These Services specifically exclude and Seller shall not be responsible for:

3.9.1. Any service work required due to environmental conditions, incorrect, or faulty operational conditions, including but not limited to Equipment not connected directly to an electric surge protector, or not properly maintained in accordance with the manufacturer's guidelines.

3.9.2. The repair or replacement of Products or parts resulting from failure of the Customer's facilities, Customer's personal property and/or devices connected to the System (or interconnected to devices) whether or not installed by Seller's representatives.

3.9.3. The repair or replacement of Equipment that has become defective or damaged due to physical or chemical misuse or abuse, Customer's negligence, or from causes such as lightning, power surges, or liquids.

3.9.4. Any transmission medium, such as telephone lines, computer networks, or the worldwide web, or for Equipment malfunction caused by such transmission medium.

3.9.5. Seller unauthorized accessories, unauthorized custom or special products; unauthorized modified units; or unauthorized modified Software.

3.9.6. The repair or replacement of parts resulting from the tampering by persons unauthorized by Seller or the failure of the System due to extraordinary uses.

3.9.7. Operation and/or functionality of Customer's personal property, equipment, and/or peripherals and any application software not provided by Seller.

3.9.8. Services for any replacement of Products or parts directly related to the removal, relocation, or reinstallation of the System or any System component.

3.9.9. Services to diagnose technical issues caused by the installation of unauthorized components or misuse of the System.

3.9.10. Services to diagnose malfunctions or inoperability of the Software caused by changes, additions, enhancements, or modifications in the Customer's platform or in the Software.

3.9.11. Services to correct errors found to be caused by Customer-supplied data, machines, or operator failure.

3.9.12. Operational supplies, including but not limited to, printer ink, printer paper, printer ribbons, toner, photographic paper, magnetic tapes and any and all consumable items and supplies in addition to that delivered with the System; battery replacement for uninterruptible power supply (UPS); office furniture including chairs or workstations.

3.9.13. Non-MorphoTrak software unless specifically listed on the Description of Covered Products.

3.9.14. Support of any interface(s) beyond Seller-provided port or cable, or any services that are necessary because Non-MorphoTrak hardware, software or supplies fail to conform to the specifications concerning the Products.

3.9.15. Services related to customer's failure to back up its data or failure to use an UPS system to protect against power interruptions.

3.9.16. Any design consultation such as, but not limited to, configuration analysis, consultation with Customer's third-party provider(s), and System analysis for modifications or Upgrades or Updates which are not directly related to a Residual Error report.

3.10. The Customer hereby agrees to:

3.10.1. Maintain any and all electrical and physical environments in accordance with the System manufacturer's specifications.



3.10.2. Provide standard industry precautions (e.g., back-up files) ensuring database security, per Seller's recommended backup procedures.

3.10.3. Ensure System accessibility, which includes physical access to buildings as well as remote electronic access. Remote access can be stipulated and scheduled with Customer; however, remote access is required and will not be substituted with on-site visits if access is not allowed or available.

3.10.4. Appoint one or more qualified employees (the "System Administrator(s)") to perform system administration duties, including acting as a primary point of contact to Seller's customer support organization for reporting and verifying problems, and performing System backup. At least one System Administrator should have completed Seller's training. The combined skills of this System Administrator(s) should include proficiency with: the Products, the system platform upon which the Products operate, the operating system, database administration, network capabilities such as backing up, updating, adding, and deleting System and user information, and the client, server and standalone personal computer hardware. The System Administrator shall follow the Residual Error reporting process described herein and make all reasonable efforts to duplicate and verify problems and assign a Severity Level, as defined in the Statement of Work. Customer agrees to use reasonable efforts to ensure that all problems are reported and verified by the System Administrator(s) before reporting them to Seller. Customer shall assist Seller in determining that errors are not the product of the operation of an external system, data links between system, or network administration issues. If a Severity Level 1 or 2 Residual Error occurs, any Customer representative may contact Seller's Customer Support Center by telephone, but the System Administrator(s) must follow up with Seller's Customer Support as soon as practical thereafter.

3.11. Intentionally left blank.

3.12. If Customer replaces, upgrades, or modifies software that interfaces with the covered Products, Seller will have the right to reasonably adjust the annual Service Fee to reflect any changes necessary to the Seller provided Equipment or related Services.

3.13. Customer shall agree not to attempt or apply any update(s), alteration(s), or change(s) to the Software without the prior approval of the Seller.

#### **SECTION 4. PRICING, PAYMENT AND TERMS**

4.1. **AGREEMENT PRICE.** The total Agreement Price in U.S. dollars is in accordance with Section 4 – Solution Pricing Service Model Plan of the technical proposal document, and shall be paid on an annual Service Fee basis as outlined in the Exhibit B, Payment Schedule.

4.2. **INVOICING AND PAYMENT.** Seller will submit invoices to Customer according to the Payment Schedule. Except for a payment that is due on the Effective Date, Customer will make payments to Seller within twenty (20) days after the date of each properly submitted invoice. Customer will make payments when due in the form of a wire transfer, check, or cashier's check from a U.S. financial institution. For Customer's reference, the Federal Tax Identification Number for MorphoTrak, LLC is 33-0154789.

4.3. **FREIGHT, TITLE, AND RISK OF LOSS.** Unless otherwise stipulated with the Customer when an Order is accepted, the Equipment will be delivered by Seller "FCA" (Free Carrier), with named place being the Seller's premises where the Goods are being dispatched, (Incoterms 2010). Title to the Equipment will pass to Customer upon payment in full of the Agreement Price as outlined in Section 5.1 above, except that title to Software will not pass to Customer at any time. Risk of loss will pass to Customer upon delivery of the Equipment to the Customer at the agreed named place of delivery. Seller will pack and ship all Equipment in accordance with good commercial practices.

4.4. **INVOICING AND SHIPPING ADDRESSES.** Invoices will be sent to the Customer at the following address:



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Dave Russell

Northern Virginia Regional Identification System

4890 Alliance Drive, Suite #2700

Fairfax, VA 22030

The city which is the ultimate destination where the Equipment will be delivered to Customer is:

Fairfax

The Equipment will be shipped to the Customer at the following address (insert if this information is known):

Dave Russell

Northern Virginia Regional Identification System

4890 Alliance Drive, Suite #2700

Fairfax, VA 22030

Customer may change this information by giving written notice to MorphoTrak.

4.5 CUSTOMER AS BAILEE. Seller makes available for use to Customer, and Customer accepts such bailment from Seller, the Equipment for the duration of the Term, and subject to the conditions, of this Agreement. For the avoidance of doubt, title to the Equipment is and will remain vested in Seller, and Customer will not (i) acquire any title or other interest in the Equipment, or any right except the limited and conditional right to use as expressly set forth herein, (ii) permit any lien, encumbrance or security interest of any kind and in any amount to attach to the Equipment, (iii) permit the Equipment to be subjected to any interchange or pooling agreement, or (iv) permit the Equipment to be operated by or to be in the possession of any person other than Customer.

4.6 AUTHORIZING FILING OF UCC STATEMENTS. Customer authorizes Seller to file UCC-1 statements, and any other financing statements or related documents naming Customer as "Debtor" and describing the Equipment in all appropriate jurisdictions and, if applicable, to notify, in accordance with applicable law, any existing creditors of Customer with respect to the consignment arrangements contemplated hereby. Such documents will be filed for the purpose of providing notice of Customer's limited and conditional right to use the Equipment hereunder.

## **SECTION 5. SITES AND SITE CONDITIONS**

5.1. ACCESS TO SITES. In addition to its responsibilities described elsewhere in this Agreement, Customer will provide (i) a designated project manager; (ii) all necessary construction and building permits, zoning variances, licenses, and any other approvals that are necessary to develop or use the Sites; and (iii) access to the Sites identified in the Statement of Work or as reasonably requested by Seller so that it may perform its duties in accordance with the Statement of Work.

5.2. SITE CONDITIONS. Customer will ensure that all Sites it provides will be safe, secure, and in compliance with all applicable industry and OSHA standards. To the extent applicable and unless the Statement of Work specifically states to the contrary, Customer will ensure that these Sites will have (i) adequate physical space for the installation, use and maintenance of the System; (ii) adequate air conditioning and other environmental conditions; (iii) adequate electrical power outlets, distribution and equipment for the installation, use and maintenance of the System; and (iv) adequate telephone or other communication lines for the installation, use and maintenance of the System, including modem access, and adequate interfacing networking capabilities. Before installing the Equipment or Software at a Site, Seller will inspect the work site and advise Customer in writing of any apparent deficiencies or non-conformities with the requirements of this Section 5.

5.3. SITE ISSUES. If Seller or Customer determines that the Sites identified in the Statement of Work are no longer available or desired, or if subsurface, structural, adverse environmental or latent conditions at any site differ from those indicated in the Statement of Work, Seller and Customer will promptly investigate the conditions and subject to Customer's written approval, will select replacement sites or adjust the installation plans and Statement of Work as necessary. If such change in Sites or adjustment to the installation plans and Statement of Work causes a change in the cost or time to perform, the parties will equitably amend the annual Service Fee or schedule, or both, by a change order.

#### **SECTION 6. TRAINING**

Any training to be provided by Seller to Customer under this Agreement will be described in a written training plan that is made part of the Statement of Work, or developed by the parties after the Effective Date. Customer will notify Seller immediately if a date change for a scheduled training program is required. If Seller incurs additional costs because Customer reschedules a training program less than thirty (30) days before its scheduled start date, Seller is entitled to recover these additional costs.

#### **SECTION 7. Intentionally left blank.**

#### **SECTION 8. LIMITED WARRANTY AND DISCLAIMERS OF WARRANTY**

8.1. Seller warrants to Customer that the Equipment: (a) upon System Acceptance will be operable, and (b) when properly installed, operated, and maintained in accordance with Seller's and manufacturer's recommendations and the terms of the Agreement, will remain operable. As more fully set forth in Article 4 of this Agreement, ownership of the Equipment shall remain with Seller throughout the Term of the Agreement. Seller also warrants to Customer that any Services Seller is required to perform pursuant to the Agreement will be performed in a competent manner. If any failure to meet these warranties appears during the Term, or any failure to meet the Services warranty described above appears within sixty (60) days of performance of the particular Services and during the Term of the Agreement, Customer shall promptly notify Seller in writing and Seller shall within a reasonable amount of time under the circumstances: (i) repair or replace, at Seller's option, Equipment that does not meet the Equipment warranty and/or (ii) re-perform the defective Service to the extent practicable. This Section 8 sets forth the sole and exclusive remedies for all claims based on failure of or defect in Equipment or Services whether a claim, however instituted, is based on contract, indemnity, warranty, tort (including negligence), or other contractual or extra contractual liability of any nature, strict liability or otherwise, and under any system, theory or principle of law.

8.2. THE FOREGOING WARRANTIES ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES WHETHER WRITTEN, ORAL, IMPLIED OR STATUTORY. EXCEPT FOR THE WARRANTIES SET FORTH IN THE PARTIES' CONTRACT, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES TO CUSTOMER OR ANY OTHER PERSON, INCLUDING, WITHOUT LIMITATION, WARRANTIES REGARDING THE SIZE, DESIGN, CAPACITY, CONDITION, QUALITY, DURABILITY, SUITABILITY, MANUFACTURE OR PERFORMANCE OF THE EQUIPMENT OR SERVICES, OR PATENT OR INTELLECTUAL PROPERTY INFRINGEMENT OR THE LIKE. NO IMPLIED STATUTORY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE SHALL APPLY.

#### **SECTION 9. DELAYS**

9.1. FORCE MAJEURE. Neither party will be liable for its non-performance or delayed performance if caused by a "Force Majeure" which means an event, circumstance, or act of a third party that is beyond a party's reasonable control, such as an act of God, an act of the public enemy, an act of a government entity, strikes or other labor disturbances, hurricanes, earthquakes, fires, floods, epidemics, embargoes, war, riots, or any other similar cause. Each party will notify the other if it becomes aware of any Force Majeure that will significantly delay performance. The notifying party will give such notice promptly (but in no event later than fifteen days) after it discovers the Force Majeure.



If a Force Majeure occurs, the parties will execute a change order to extend the Performance Schedule for a time period that is reasonable under the circumstances, or, Customer may terminate the Contract at its option.

9.2. PERFORMANCE SCHEDULE DELAYS CAUSED BY CUSTOMER. If the Performance Schedule is delayed because of Customer (including any of its other contractors), (i) the parties will execute a change order to extend the schedule and, if requested by Seller, compensate Seller for all reasonable charges incurred because of such delay. Delay charges may include costs incurred by Seller or its subcontractors for additional freight, warehousing and handling of Equipment; extension of the warranties; travel; suspending and re-mobilizing the work; additional engineering, project management, and standby time calculated at then current rates; and preparing and implementing an alternative implementation plan.

**SECTION 10. Intentionally left blank.**

**SECTION 11. Intentionally left blank.**

## **SECTION 12. INDEMNIFICATION**

### **12.1. PATENT AND COPYRIGHT INFRINGEMENT.**

12.1.1. Seller will defend at its expense any suit brought against Customer to the extent that it is based on an Infringement Claim, and Seller will indemnify Customer for those costs and damages finally awarded against Customer for an Infringement Claim. Seller's duties to defend and indemnify are conditioned upon: (i) Customer promptly notifying Seller in writing of such Infringement Claim; (ii) Seller having sole control of the defense of such suit and all negotiations for its settlement or compromise; (iii) Customer providing to Seller cooperation and, if requested by Seller, reasonable assistance in the defense of the Infringement Claim.

12.1.2. If an Infringement Claim occurs, or in Seller's opinion is likely to occur, Seller may at its option and expense procure for Customer the right to continue using the Equipment or MorphoTrak Software, replace or modify it so that it becomes non-infringing while providing functionally equivalent performance, or grant Customer a credit for such Equipment or MorphoTrak Software as depreciated and accept its return. The depreciation amount will be calculated based upon generally accepted accounting standards for such Equipment and MorphoTrak Software.

12.1.3. Seller will have no duty to defend or indemnify for any Infringement Claim that is based upon (i) the combination of the Equipment or MorphoTrak Software with any software, apparatus or device not furnished by Seller; (ii) the use of ancillary equipment or software not furnished by Seller and that is attached to or used in connection with the Equipment or MorphoTrak Software; (iii) any Equipment that is not Seller's design or formula; (iv) a modification of the MorphoTrak Software by a party other than Seller; or (v) the failure by Customer to install an enhancement release to the MorphoTrak Software that is intended to correct the claimed infringement. The foregoing states the entire liability of Seller with respect to infringement of patents and copyrights by the Equipment and MorphoTrak Software or any parts.

## **SECTION 13. LIMITATION OF LIABILITY**

13.1. SELLER LIABILITY. This limitation of liability provision shall apply notwithstanding any contrary provision in this Agreement. Except for personal injury or death, Seller's total liability, whether for breach of contract, warranty, negligence, strict liability in tort, indemnification, or otherwise, will be limited to the direct damages recoverable under law, but not to exceed the price of the Equipment, Software, or services with respect to which losses or damages are claimed. **ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT SELLER WILL NOT be liable for any commercial loss; inconvenience; loss of use, time, data, goodwill, revenues, profits or savings; or other SPECIAL, incidental, punitive, INDIRECT, OR consequential damages IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT, THE**



SALE OR USE OF THE EQUIPMENT OR SOFTWARE, OR THE PERFORMANCE OF SERVICES BY SELLER PURSUANT TO THIS AGREEMENT. This limitation of liability will survive the expiration or termination of this Agreement. No action for breach of this Agreement or otherwise relating to the transactions contemplated by this Agreement may be brought more than one (1) year after the accrual of such cause of action, except for money due upon an open account.

**SECTION 14. Intentionally left blank.**

**SECTION 15. CONFIDENTIALITY, PROPRIETARY RIGHTS, AND RIGHTS IN DATA**

**15.1. CONFIDENTIAL INFORMATION.**

15.1.1. During the term of this Agreement, the parties may provide each other with Confidential Information. For the purposes of this Agreement, "Confidential Information" is any information disclosed in written, graphic, verbal, or machine-recognizable form, and is marked, designated, labeled or identified at the time of disclosure as being confidential or its equivalent; or if in verbal form is identified as confidential or proprietary at the time of disclosure and confirmed in writing within thirty (30) days of such disclosure. Notwithstanding any other provisions of this Agreement, Confidential Information shall not include any information that: (i) is or becomes publicly known through no wrongful act of the receiving party; (ii) is already known to the receiving party without restriction when it is disclosed; (iii) is, or subsequently becomes, rightfully and without breach of this Agreement, in the receiving party's possession without any obligation restricting disclosure; (iv) is independently developed by the receiving party without breach of this Agreement; (v) is explicitly approved for release by written authorization of the disclosing party.

15.1.2. Each party will: (i) maintain the confidentiality of the other party's Confidential Information and not disclose it to any third party, except as authorized by the disclosing party in writing or as required by a court of competent jurisdiction; (ii) restrict disclosure of Confidential Information to its employees who have a "need to know" and not copy or reproduce such Confidential Information; (iii) take necessary and appropriate precautions to guard the confidentiality of Confidential Information, including informing its employees who handle such Confidential Information that it is confidential and not to be disclosed to others, but such precautions shall be at least the same degree of care that the receiving party applies to its own confidential information and shall not be less than reasonable care; and (iv) use such Confidential Information only in furtherance of the performance of this Agreement. Confidential Information is and shall at all times remain the property of the disclosing party, and no grant of any proprietary rights in the Confidential Information is hereby given or intended, including any express or implied license, other than the limited right of the recipient to use the Confidential Information in the manner and to the extent permitted by this Agreement.

**15.2. PRESERVATION OF PROPRIETARY RIGHTS.**

15.2.1. MorphoTrak, the third party manufacturer of any Equipment, and the copyright owner of any Non-MorphoTrak Software own and retain all of their respective Proprietary Rights in the Equipment and Software. Nothing in this Agreement is intended to restrict the Proprietary Rights of MorphoTrak, any copyright owner of Non-MorphoTrak Software, or any third party manufacturer of Equipment. All intellectual property developed, originated, or prepared by MorphoTrak in connection with providing to Customer the Equipment, Software, or related services remain vested exclusively in MorphoTrak, and this Agreement does not grant to Customer any shared development rights of intellectual property.

15.2.2. Except as explicitly provided in the Software License Agreement, nothing in this Agreement will be deemed to grant, either directly or by implication, estoppel, or otherwise, any right, title or interest in the Proprietary Rights of MorphoTrak or Seller. Customer agrees not to modify, disassemble, peel components, decompile, otherwise reverse engineer or attempt to reverse engineer, derive source code or create derivative works from, adapt, translate, merge with other software, reproduce, or export the Software, or permit or encourage any third party to do so. The



preceding sentence shall not apply to Open Source Software which is governed by the standard license of the copyright owner.

### 15.3 RIGHTS IN DATA

15.3.1. All materials, documents, data or information obtained from Customer data files or any Customer medium furnished to Seller in the performance of this Contract will at all times remain the property of Customer. Such data or information may not be used or copied for direct or indirect use by Seller after completion or termination of this Agreement without the express written consent of Customer. All materials, documents, data or information, including copies, must be returned to Customer at the end of this Agreement.

## SECTION 16. MISCELLANEOUS

16.1. **TAXES.** The Contract Price does not include any amount for federal, state, or local excise, sales, lease, service, rental, use, property, occupation, or other taxes, assessments or duties (other than federal, state, and local taxes based on Seller's income or net worth), all of which will be paid by Customer except as exempt by law. If Seller is required to pay or bear the burden of any such taxes, it will send an invoice to Customer and Customer will pay to it the amount of such taxes (including any applicable interest and penalties) within twenty (20) days after the date of the invoice. The Customer represents to Seller that it is not required to pay federal, state or local government taxes.

16.2. **ASSIGNABILITY.** Neither party may assign this Agreement without the prior written consent of the other party, except that Seller may assign this Agreement to any successor of Seller's biometrics business or to any party acquiring the assets used by Seller in conducting such biometrics business or otherwise performing Seller's obligations under this Agreement and Seller shall provide Customer with written notice of any such permitted assignment.

16.3. **SUBCONTRACTING.** Seller may subcontract any portion of the work, but such subcontracting will not relieve Seller of its duties under this Agreement.

16.4. **WAIVER.** Failure or delay by either party to exercise any right or power under this Agreement will not operate as a waiver of such right or power. For a waiver of a right or power to be effective, it must be in writing signed by the waiving party. An effective waiver of a right or power shall not be construed as either (i) a future or continuing waiver of that same right or power, or (ii) the waiver of any other right or power.

16.5. **SEVERABILITY.** If a court of competent jurisdiction renders any provision of this Agreement (or portion of a provision) to be invalid or otherwise unenforceable, that provision or portion of the provision will be severed and the remainder of this Agreement will continue in full force and effect as if the invalid provision or portion of the provision were not part of this Agreement.

16.6. **INDEPENDENT CONTRACTORS.** Each party shall perform its activities and duties hereunder only as an independent contractor. The parties and their personnel shall not be considered to be employees or agents of the other party. Nothing in this Agreement shall be interpreted as granting either party the right or authority to make commitments of any kind for the other. This Agreement shall not constitute, create, or in any way be interpreted as a joint venture, partnership or formal business organization of any kind.

16.7. **HEADINGS AND SECTION REFERENCES.** The section headings in this Agreement are inserted only for convenience and are not to be construed as part of this Agreement or as a limitation of the scope of the particular section to which the heading refers. This Agreement will be fairly interpreted in accordance with its terms and conditions and not for or against either party.

16.8. Intentionally left blank.

16.9. **ENTIRE AGREEMENT.** The contract 4400006490 and this Agreement, including all Exhibits to both, constitutes the entire agreement of the parties regarding the subject matter hereof and



supersedes all previous agreements, proposals, and understandings, whether written or oral, relating to such subject matter. This Agreement may be altered, amended, or modified only by a written instrument signed by authorized representatives of both parties. The preprinted terms and conditions found on any Customer purchase order, acknowledgment or other form will not be considered an amendment or modification of this Agreement, even if a representative of each party signs such document.

16.10. NOTICES. Notices required under this Agreement to be given by one party to the other must be in writing and either delivered in person or sent to the address shown below by certified mail, return receipt requested and postage prepaid (or by a recognized courier service with an asset tracking system, such as Federal Express, UPS, or DHL), or by facsimile with correct answerback received, and shall be effective upon receipt:

**Customer**

**MorphoTrak**

Dave Russell	MorphoTrak
Fairfax County (representing the Northern Virginia Regional Identification System)	Legal Department
4890 Alliance Drive, Suite #2700	5515 E. La Palma Ave. Suite 100
Fairfax, VA 22030	Anaheim CA 92807

16.11. Intentionally left blank.

16.12. AUTHORITY TO EXECUTE AGREEMENT. Each party represents to the other that (i) it has obtained all necessary approvals, consents and authorizations to enter into this Agreement and to perform its duties under this Agreement; (ii) the person executing this Agreement on its behalf has the authority to do so; (iii) upon execution and delivery of this Agreement by the parties, it is a valid and binding contract, enforceable in accordance with its terms; and (iv) the execution, delivery, and performance of this Agreement does not violate any bylaw, charter, regulation, law or any governing authority of the party.

16.13. COUNTERPARTS. This Agreement may be executed in counterparts, each of which shall constitute an original, but all of which shall constitute one and the same document.

16.14. Intentionally left blank.

16.15. SURVIVAL OF TERMS. The following provisions shall survive the expiration or termination of this Agreement for any reason: Section 3.4 (MorphoTrak Software); Section 3.5 (Non-MorphoTrak Software); if any payment obligations exist, Sections 4.1, 4.2 (Contract Price and Invoicing and Payment), 4.5 (Customer as Bailee), and 4.6 (Authorizing Filing of UCC Statements); Section 13 (Limitation of Liability); Section 15 (Confidentiality, Proprietary Rights, and Rights in Data); and all of the provisions in Section 16.

**SECTION 17. AGREEMENT EXECUTION**

The parties hereby enter into this Agreement as of the Effective Date.

MorphoTrak, LLC ("Seller"):

Fairfax County (for the Northern Virginia Regional Identification System ("Customer")):

Signed

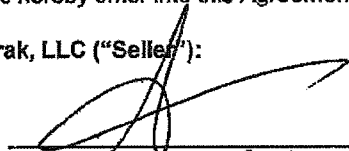
Signed

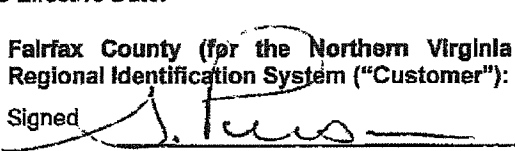
Name

Name

Title

Title

  
\_\_\_\_\_  
Andrew Gilmore  
Sr. Director

  
\_\_\_\_\_  
Steve Pierson, CPPB  
Contracts Manager



Amendment No. 8  
NOVARIS  
Proposal # 00-000976-C  
May 3, 2017

Date	<u>5/11/17</u>	Date	<u>8/31/17</u>
Phone	<u>714 322 2237</u>	Phone	<u>703-324-3201</u>
Email	<u>andree.gilmore@morpho.com</u>	Email	<u>STEVE.PIERSON@FAIRFAXCOUNTY.GOV</u>

## Exhibit A Software License Agreement

For good and valuable consideration, the parties agree as follows:

### SECTION 1 DEFINITIONS

- 1.1. "Agreement" means this Exhibit
- 1.2. "Designated Products" means products provided by MorphoTrak to Licensee with which or for which the Software and Documentation is licensed for use.
- 1.3. "Documentation" means product and software documentation that specifies technical and performance features and capabilities, and the user, operation and training manuals for the Software (including all physical or electronic media upon which such information is provided).
- 1.4. "Licensor" means Morpho Trak LLC ("Morpho Trak")
- 1.5. "Licensee" means the Customer
- 1.6. "Open Source Software" means software with either freely obtainable source code, license for modification, or permission for free distribution.
- 1.7. "Open Source Software License" means the terms or conditions under which the Open Source Software is licensed.
- 1.8. "Primary Agreement" means the agreement to which this exhibit is attached.
- 1.9. "Security Vulnerability" means a flaw or weakness in system security procedures, design, implementation, or internal controls that could be exercised (accidentally triggered or intentionally exploited) and result in a security breach such that data is compromised, manipulated or stolen or the system damaged.
- 1.10. "Software" (i) means proprietary software in object code format, and adaptations, translations, de-compilations, disassemblies, emulations, or derivative works of such software; (ii) means any modifications, enhancements, new versions and new releases of the software provided by MorphoTrak; and (iii) may contain one or more items of software owned by a third party supplier. The term "Software" does not include any third party software provided under separate license or third party software not licensable under the terms of this Agreement.
- 1.11. "Third Party" means any other customer end-users not part of NOVARIS.

### SECTION 2 SCOPE

MorphoTrak and Licensee enter into this Agreement in connection with MorphoTrak's delivery of certain proprietary Software or products containing embedded or pre-loaded proprietary Software, or both. This Agreement contains the terms and conditions of the license MorphoTrak is providing to Licensee, and Licensee's use of the Software and Documentation.

### SECTION 3 GRANT OF LICENSE

3.1 Subject to the provisions of this Agreement and the payment of applicable fees under the Primary Agreement, MorphoTrak grants to Licensee a personal, limited, non-transferable (except as permitted in Section 7) and non-exclusive license under MorphoTrak's copyrights and Confidential Information (as defined in the Primary Agreement) embodied in the Software to use the Software, in object code form, and the Documentation solely in connection with Licensee's use of the Designated Products. This Agreement does not grant any rights to source code.



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**SECTION 4 LIMITATIONS ON USE**

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9.5 SURVIVAL. Sections 4, 5, 6.3, 7, 8, and 9 survive the termination of this Agreement.



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## Exhibit B      Payment Schedule

The first payment is due upon acceptance, as defined in Section 4 of Exhibit C. Subsequent payments will be made according to Table 2.

*\*Payment is due on the 1<sup>st</sup> day of each payment year.  
Applicable sales tax will be applied to the annual payments when they are due.*

## Exhibit C Statement of Work

The purpose of the Statement of Work is to define the standard work performed on a service model contract by both the Northern Virginia Regional Identification System and MorphoTrak. The goal is to ensure that roles, responsibilities, and deliverables are clearly defined so that the service is delivered on time, on budget, and with the highest customer satisfaction.

### 1 MorphoTrak and Customer Responsibility Matrix

Table 4 defines MorphoTrak and Northern Virginia Regional Identification System responsibilities for service activities and deliverables.

**Table 4: Activities and Deliverables**

MorphoTrak Responsibilities	NOVARIS Responsibilities
<b>Project Management Services</b>	
1. Provide Program Management services as needed to coordinate the LiveScan deliveries.	1. Provide Program Management services as needed to coordinate the LiveScan deliveries.
<b>Project Design Documentation</b>	
1. Provide updates as required to system documentation.	
<b>Purchasing</b>	
1. Verify that the proposal BOM is still valid and that no items have gone End-of-Life (EOL). Replacement items will be identified if necessary and you will be notified of the changes. 2. Procure the hardware and third-party software listed on the BOM. 3. Inventory the material. 4. Stage the equipment as needed for factory testing.	
<b>Engineering Integration</b>	
1. Configure the commercial-off-the-shelf (COTS) software per the requirements in the approved Design Documents developed under the ABIS project.	1. Configure the network (LAN / WAN) according to the approved Design Documents.
<b>Site Preparation</b>	
1. Provide site preparation documentation identifying the power, network, air conditioning, space, cabling, access,	1. Approve the scheduling of the LiveScan deliveries. 2. Identify the locations for each item

MorphoTrak Responsibilities	NOVARIS Responsibilities
<p>security, and equipment layout requirements for system implementation.</p>	<p>procured. Provide a physical address, contact name, and contact phone number for each site.</p> <ol style="list-style-type: none"> <li>3. Provide the required layout information on the sites as well as any known constraints.</li> <li>4. Review the site preparation documentation and confirm that there are no compliance issues.</li> <li>5. Prepare the sites and the interconnection of the sites according to the site preparation documentation.</li> <li>6. The NOVARIS is responsible for the local area and wide area networks. Performance will be affected by network bandwidth.</li> <li>7. The NOVARIS is responsible for network and power reliability and availability. Failure in these areas cannot be counted against MorphoTrak's reliability and availability of contractual requirements.</li> <li>8. Provide a formal notice for MorphoTrak indicating that the site preparation has been completed and validated, and the interconnection is operational before equipment is shipped to the sites.</li> <li>9. If the network is not functioning per the specifications when MorphoTrak arrives for installation, the NOVARIS should address requests for correction within one day. Delays will impact the schedule and may result in additional charges for labor, lodging, and per diem for the employees on site for the duration of the extension.</li> <li>10. Provide a temporary storage area for the delivered hardware if required.</li> </ol>
Shipping and Delivery	
<ol style="list-style-type: none"> <li>1. Provide a schedule for shipping and delivery to each site.</li> <li>2. Securely crate or palletize all deliverables.</li> <li>3. Provide shipping manifests that identify all items, including serial numbers.</li> <li>4. Arrange for the secure shipping of all hardware, and third-party and MorphoTrak software to the designated target sites.</li> </ol>	<ol style="list-style-type: none"> <li>1. Approve the schedule for shipment and delivery of the hardware and software for each site.</li> <li>2. Receive all material and immediately notify MorphoTrak of any visible damage to shipping containers.</li> <li>3. Provide temporary storage for the delivered hardware if required.</li> </ol>



MorphoTrak Responsibilities	NOVARIS Responsibilities
<b>Deliverables: Hardware, Software, and Services</b>	
1. MorphoTrak will deliver the hardware, software, and services listed in Section 4. MorphoTrak retains ownership of the equipment.	
<b>Installation and On-Site Integration Testing</b>	
<ol style="list-style-type: none"> <li>Propose the installation schedule in advance of delivery.</li> <li>Unpack, inventory and install all equipment.</li> <li>Power up the equipment and verify connectivity between components.</li> <li>Troubleshoot any installation issues.</li> <li>Run on-site integration tests with the external systems.</li> <li>Identify any open issues prior to Acceptance Testing.</li> </ol>	<ol style="list-style-type: none"> <li>Approve or reject the proposed installation schedule in advance of delivery.</li> <li>Provide access to the sites for MorphoTrak and MorphoTrak sub-contractors as required.</li> <li>Provide the support for site and security issues.</li> <li>Ensure timely IT support availability for addressing network issues.</li> <li>Provide access to the site 8 a.m. to 8 p.m., Monday through Saturday, with escort if required.</li> </ol>
<b>Site Acceptance Test (SAT)</b>	
<ol style="list-style-type: none"> <li>Conduct acceptance testing, either prior to training or in conjunction with training.</li> <li>Fix any issues, re-run the failed tests, and log any open issues with Customer Support.</li> </ol>	<ol style="list-style-type: none"> <li>Participate in the SAT, sign off on passed tests, and identify any failed requirements.</li> <li>Validate the successful fixes during re-testing and sign off on the SAT.</li> </ol>
<b>Training Documentation</b>	
<ol style="list-style-type: none"> <li>Deliver the user manuals for MorphoTrak applications.</li> <li>Deliver the administrator manual(s) for the system.</li> </ol>	<ol style="list-style-type: none"> <li>The NOVARIS may make unlimited electronic copies for internal use.</li> </ol>
<b>Training and Acceptance</b>	
<ol style="list-style-type: none"> <li>Provide operator LiveScan training immediately following installation and integration.</li> <li>Provide attendance sheets and training certificates.</li> <li>Provide, collect, and review feedback forms.</li> <li>Trainers provide contact information for follow up questions.</li> </ol>	<ol style="list-style-type: none"> <li>Ensure availability of the trainees and confirm they meet any prerequisite requirements.</li> <li>Trainees are encouraged to provide feedback on the training courses.</li> </ol>
<b>Travel</b>	
1. Organize MorphoTrak personnel travel.	1. Organize any NOVARIS personnel travel.

MorphoTrak Responsibilities	NOVARIS Responsibilities
2. Pay for MorphoTrak personnel travel expenses.	2. Pay for NOVARIS personnel travel expenses.
<b>Technical Refresh</b>	
N / A	

## 2 System Operations, Monitoring, and Administration Tasks

Table 5 defines MorphoTrak and NOVARIS responsibilities for system operations, monitoring, and administration tasks.

**Table 5: System Operations, Monitoring, and Administration Responsibilities**

MorphoTrak Responsibility	NOVARIS Responsibility
<b>System Operations Report</b>	
Provided under the ABIS support agreement	
<b>LAN/WAN Administration and Supervision</b>	
	1. Provide all LAN / WAN administration, supervision, and support.
<b>User Management</b>	
	1. System administrators will be responsible for LiveScan user management including: <ul style="list-style-type: none"> <li>a. Creating users.</li> <li>b. Establishing and modifying user access rights.</li> <li>c. Enabling and disabling user accounts.</li> <li>d. Deactivating users.</li> </ul>
<b>Help Desk</b>	
<ul style="list-style-type: none"> <li>1. Provide Call Center support per your service agreement, including a 1-800 number and email access.</li> <li>2. Record and track all service calls in our database.</li> <li>3. Dispatch local Customer Support Engineers as required per your service support agreement.</li> <li>4. Provide monthly reports on Help Desk tickets.</li> </ul>	
<b>Delivery of Consumables</b>	
	1. Provide batteries and other consumables.



### 3 System Maintenance Tasks

Table 6 defines MorphoTrak and NOVARIS responsibilities for system maintenance tasks.

**Table 6: System Maintenance Responsibilities**

MorphoTrak Responsibility	NOVARIS Responsibility
<b>Hardware Preventive Maintenance</b>	
1. Perform all necessary preventive hardware maintenance.	N/A
<b>Software Preventive Maintenance</b>	
1. Perform log analysis and software updates, and load any software patches required to ensure software is performing per specification.	1. Confirm which software updates may be loaded and approve the schedule.
<b>Anti-Virus</b>	
1. Run Windows anti-virus software on the system prior to shipping. 2. Assist NOVARIS IT personnel with implementation of anti-virus update schema.	1. Manage virus protection after the system is installed on your site, including definition downloads, virus checking, and reporting.
<b>Remedial Maintenance Support</b>	
1. Repair, replace, or upgrade hardware as necessary to ensure that failed or degraded hardware is performing per specification within the conditions of the maintenance contract. 2. Perform log analysis and technical investigations as necessary to diagnose system events. 3. Produce software updates and fixes within the conditions of the maintenance contract. This may include source code analysis and patch creation. 4. Test and install software updates and fixes in the production environment within the conditions of the maintenance contract.	N/A
<b>Spares Management</b>	
1. Maintain and manage an appropriate inventory of spare parts and install spare parts as necessary in the event of a system failure.	N/A



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## 4 Acceptance Process

The acceptance process is characterized by running an acceptance test for each LiveScan, documenting any anomalies with a plan to fix, having a site representative sign the acceptance certificate upon successful completion of all agreed-upon acceptance tests, and putting the LiveScan into service.